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STATE FOR EUR/CE, INL/C
DEPARTMENT OF JUSTICE FOR OPDAT, N. ACKER

E.O. 12958: N/A

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SUBJECT: CONSTITUTIONAL COURT DECLARES THE SPECIAL COURT
AGAINST CORRUPTION UNCONSTITUTIONAL

¶1. Summary. In a 7-6 decision, the Slovak Constitutional Court on May 20 ruled, pursuant to a complaint filed by a group of parliamentary deputies, that the Slovak Special Court Against Corruption is unconstitutional. Until recently, most analysts speculated that the Constitutional Court decision would go the other way, but that its ruling would likely open the door to weakening the Special Court via legislative amendments. It is still too early to assess the full ramifications of this decision, e.g., for the validity of past Special Court convictions, but most law enforcement and anti-corruption experts assess that it has dealt a serious blow to Slovakia's ability to fight corruption and organized crime.

¶2. Although the text of the decision has not been published, it appears that the seven Constitutional Court judges accepted the main arguments of the 46 MPs, mainly from Vladimir Meciar's HZDS party, who filed a complaint with the Court in February 2008: 1) that the salaries of the Special Court judges, which by law are five-to-six-times higher than those of regular judges are discriminatory; and 2) the fact that the Special Court judges must have government-issues security clearances curtails their independence.

¶3. According to Radoslav Prochazka, the attorney who represented Parliament in the case, i.e., he defended the Special Court, stated after the ruling: "I didn't catch one relevant reason why the court didn't deem it adequate just to cancel the requirement for security clearances, and I don't think such a reason exists." In a widely-shared view, Prochazka said it can't be excluded that criminals convicted by the court might successfully petition for freedom and new trials. Although there is a six-month period after publication of the court's decision in which legislators may revise the law to bring it into compliance with the Constitution, Prochazka concluded that "practically, it means that the Special Court, by this decision is de facto canceled as an institution."

¶4. We are beginning to hear reactions from across the political spectrum, including a statement from the Prime Minister's office: "The Prime Minister fully respects the decisions regarding both institutions." (Note, while the Constitutional Court ruled against the Special Court, it did not declare the Special Prosecutor, which works closely with the court, unconstitutional.) The architects of the court's apparent demise, Meciar's HZDS, issued a statement saying that unlike members of the opposition parties, no member of HZDS had ever been before the Special Court. "So, it is not the case that we opposed it because any of our representatives are afraid of it...and HZDS continues to view the fight against corruption as a priority."

¶5. In a separate development, also on May 20, the nomination of Justice Minister Harabin (a vociferous opponent of the

Special Court) as a candidate for the position of Chief Justice of the Supreme Court and head of the Judicial Council was made public. The vote for should be held on June 20. He is the only candidate at this point. In a few weeks, a Harabin-drafted law that proposes to shift key competencies from the Ministry of Justice to the Chief of the Supreme Court is expected to go into the second reading in parliament in early June.

¶6. Comment and conclusion: In a May 19 meeting, Charge and the UK and Dutch Ambassadors met to discuss corruption and rule of law issues. They agreed to re-convene after the decision on the Special Court to discuss next steps. Although the theoretical possibility exists that Parliament could draft and approve a new law on the Special Court consistent with the Constitution, regretfully, we agree with attorney Prochazka's conclusion: Special Court Against Corruption and Organized Crime, 2005-2009, RIP.

EDDINS